



SUMMARY MINUTES - NOVEMBER 18, 2008

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OPEN SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

MEMBERS PRESENT: Sean Harrigan, President Richard Costigan, Vice President Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER

- Suzanne M. Ambrose
- SPB announced its Analyst Training Series which is be a group of courses state employees take who are analysts or aspire to be analysts.
 SPB is working in cooperation with the Los Rios Community College District. The first class starts on December 2, 2008.
- SPB staff have been examining ways to cut costs and surveyed all individuals on our mailing list to ask if we could have them view our Pinkies, Board agendas and minutes electronically instead of receiving hard copies. Staff received only one objection so SPB has reduced the cost of reproducing these items which equates to a savings of approximately \$18,000 per year.

3. REPORT OF THE ACTING CHIEF COUNSEL

- Bruce Monfross
- Maria Ortiz v. SPB/CDCR Staff has received a decision for the San Joaquin Superior Court upholding the SPB's non-precedential decision that sustained a 5% reduction in pay for 3 pay periods that had been imposed on the appellant for arguing and using profanity with an inmate, which resulted in a physical altercation between appellant, the inmate and other staff.
- McCollum v. State of California, et al. A hearing will be conducted on December 12, 2008, in the United States District Court, Northern District of California, concerning the joint motion filed by SPB and the Department of Corrections and Rehabilitation to dismiss the complaint (plaintiffs allege that the Department of Corrections and Rehabilitation has impermissibly failed to appoint Wiccan priests to minister to Wiccan inmates).
- Gilb v. Chiang On 11/6/08, US District Judge Morrison England remanded this case back to state court. This is the action by DPA to compel the controller to comply with the governor's executive order reducing state employee wages to minimum wage. Defendants had removed the case to federal court, and DPA moved to remand the case back to state court. The court found that merely raising a federal issue (FLSA) as an affirmative defense is insufficient to establish a federal question.

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- <u>Plata v. Schwarzenegger, et al.</u> The SPB is scheduled to file a joint response with the Receiver's Office concerning the status of the SPB again exercising jurisdiction over disciplinary cases involving CDCR physicians.
- Staff Counsel IV Elise Rose has accepted a position with the Unemployment Insurance Appeals Board as an Administrative Law Judge. Her last day with the Board will be 12/31/08.

4. REPORT ON LEGISLATION

- Jan Boel
- Staff met with Agency regarding proposed legislation and will report the results to the Board in closed session.
- 5. DISCUSSION OF UPCOMING BOARD MEETING SCHEDULED FOR DECEMBER 2, 2008, IN SAN FRANCISCO, CALIFORNIA.

NONE

6. NEW BUSINESS

NONE

7. PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA

NONE

CLOSED SESSION OF THE STATE PERSONNEL BOARD

8. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matters submitted at prior hearing. [Government Code Sections 11126(c)(3), 18653(3)]

9. DELIBERATION ON NON-EVIDENTIARY CASES AND ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on proposed, rejected, remanded, and submitted decisions, petitions for rehearing, and other matters related to cases heard by Administrative Law Judges of the State Personnel Board or by the Board itself.

[Government Code sections 11126(c)(3), 18653]

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10. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1), 18653.]

California Highway Patrol, et al. v. State Personnel Board, et al.

Sacramento Superior Court

Case No. 34-2008-00002G14-CU-WM-GDS

California Department Corrections and Rehabilitation, et al. v. State

Personnel Board, et al.

Sacramento Superior Court

Case No. 34-2007-00883875-CU-WM-GDS

Patrick McCollum v. State of California

United States District Court, Northern District of California

Case No. C 04-03339 CRB

Plata, et al. v. Schwarzenegger, et al.

Case No. C01-1351 TEH

<u>Yvonne Walker, Service Employees International Union, Local 1000 v.</u>
<u>Arnold Schwarzenegger, et al.</u>, Sacramento Superior Court Case No. 34-2008-40000001-CU-PT-GDS

11. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the Legislature.

[Government Code section 18653]

12. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.

[Government Code section 18653]

13. EMPLOYEE PERSONNEL MATTER

Discussion concerning the appointment and employment of Chief Counsel candidates. [Government Code section 11126(a)(1)]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

BOARD ACTIONS:

14. RESOLUTION EXTENDING TIME PURSUANT TO GOVERNMENT CODE SECTION 18671.1

ACTION: ADOPTED

VOTE: Harrigan, Costigan, Tom – Aye

15. SUBMITTED ITEMS

A. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S PROPOSED ESTABLISHMENT OF NEW CLASS, MENTAL HEALTH THERAPIST

Department of Corrections and Rehabilitation proposed the establishment of a new class, Mental Health Therapist, Correctional Facility, with a twelve month probationary period and designation of the class as sensitive under State Personnel Board Rule 213 for the purpose of pre-employment drug testing.

NO ACTION

B. STATE EMPLOYEE MEDIATION PROGRAM HEARING

SPB Staff presented different options for administering the State Employee Mediation Program in light of resource limitations.

Interested parties were invited to comment. Staff will meet with Stakeholders to obtain additional input and report back to the

NO ACTION

Board.

C. PERSONAL SERVICES CONTRACT 08-10

Appeal by the Department of General Services from the Executive Officer's May 19, 2008, Decision disapproving a Personal Services Contract for Information Technology Services.

NO ACTION

D. RECEIVER'S REQUEST FOR DELEGATION AND MODIFICATION TO PROCESSES

The Receiver's Office requested the Board delegate several classification functions to the Receiver's Office, subject to Board audit, and requested the Board approve revised procedures for reviewing examination and classification requests submitted by the Receiver's Office.

NO ACTION

E. CAREER EXECUTIVE ASSIGNMENT (CEA)

A public hearing was conducted to provide interested parties an opportunity to address the Board concerning whether the Board should promulgate regulations that address the following issues:

- 1. Should CEA be defined as a single classification or separate classifications based on pay band?
- 2. Should an examination be required for CEA realignments "in place"?
- 3. Should an examination be required to transfer an incumbent CEA to a different CEA position at a higher level regardless of the appointing authority?

NO ACTION

F. CAREER EXECUTIVE ASSIGNMENT (CEA) PROCESS CHANGES

The CEA Task Force recommended to the Board full implementation of the changes to the process used to allocate positions to the CEA category that were piloted with a limited number of state departments since May 2008. Interested parties provided input to the Board before it makes a decision on the Task Force's recommendation.

NO ACTION

G. LIMITED THREE-RANKS PILOT PROJECT: REQUEST TO ADD A CLASS TO THE PILOT PROJECT

The Department of Education requested the addition of the class of Education Program Consultant to the Limited Three-Ranks Pilot Project. Interested parties provided information to the Board before it makes a decision on the request.

NO ACTION

16. ANNOUNCEMENT OF ACTION TAKEN ON EVIDENTIARY CASES

On November 18, 2008, the Board took the following action on the cases listed as presented by Bruce Monfross, Acting Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Tom – Aye

A. BOARD CASES SUBMITTED

(1) CASE NO. 06-2706PA

Appeal from dismissal

Classification: Correctional Sergeant

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted April 7, 2008.

Transcript prepared.

Oral argument set for August 8, 2008, Sacramento.

Oral argument continued.

Oral argument set for October 3, 2008, Sacramento.

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Oral argument continued.

Oral argument heard November 3, 2008, Sacramento.

Case ready for decision by FULL Board.

NO ACTION

(2) CASE NO. 04-1782A

Appeal from constructive medical suspension

Classification: Correctional Counselor I

Department: Department of Corrections and Rehabilitation

Proposed decision rejected June 24, 2008.

Transcripts prepared.

Oral argument heard October 3, 2008, Sacramento.

Case ready for decision by FULL Board.

NO ACTION

(3) CASE NO. 06-2737PA

Appeal from dismissal

Classification: Correctional Sergeant

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted April 22, 2008.

Transcripts prepared.

Oral argument set for August 8, 2008, Sacramento.

Oral argument continued.

Oral argument set for October 3, 2008, Sacramento.

Oral argument continued.

Oral argument heard November 3, 2008, Sacramento.

Case ready for decision by FULL Board.

NO ACTION

B. ORAL ARGUMENTS

NONE

C. <u>CHIEF COUNSEL RESOLUTIONS, REMANDS, STIPULATIONS, OTHER</u>

(1) CASE NO. 06-0014

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation ACTION: The Board officially ratified its decision from the November 3, 2008 meeting that revoked its prior decision in the case and scheduled the matter for argument before the Board.

D. ADMINISTRATIVE LAW JUDGES' PROPOSED DECISIONS

PROPOSED DECISIONS AFTER HEARING

(1) CASE NO. 08-0346

Appeal from dismissal

Classification: Spray Specialist

Department: California State University, San Bernardino **ACTION:** The Board adopted the ALJ's Proposed

Decision.

(2) CASE NO. 06-1937

Appeal from dismissal

Classification: Reentry Program Instructor

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed

Decision.

(3) CASE NO. 07-1634

Appeal from ten percent reduction in salary for 18 months

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed

Decision.

(4) CASE NO. 07-0490E

Appeal for discrimination complaint

Classification: Correctional Officer (candidate)

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed

Decision.

(5) CASE NO. 07-3389

Appeal from five percent reduction in salary for 12 months

Classification: Parole Agent I

Department: Department of Corrections and Rehabilitation

ACTION: The Board adopted the ALJ's Proposed

Decision.

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

E. PETITIONS FOR REHEARING

(1) CASE NO. 07-5860NP

Appeal for merit issue complaint

Classification: Labor Relations Manager I Department: Department of Health Services

ACTION: DENIED

F. PENDING BOARD REVIEW

(1) CASE NO. 07-3421PA

Appeal from dismissal

Classification: Correctional Officer

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted October 21, 2008.

Pending transcript.

(2) CASE NO. 05-4338EA & 05-4339A

Appeal from denial of reasonable accommodation and constructive medical termination

Classification: Registered Nurse

Department: Department of Corrections and Rehabilitation

Proposed decision rejected September 23, 2008.

Transcripts prepared.

Oral argument set for December 2, 2008, San Francisco.

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(3) CASE NO. 08-0440A

Appeal from dismissal

Classification: Correctional Sergeant

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted October 21, 2008.

Pending transcript.

(4) CASE NO. 07-1749PA

Appeal from automatic resignation

Classification: Youth Correctional Officer (Permanent-

Intermittent)

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted October 21, 2008.

Pending transcript.

(5) CASE NO. 07-3873PA

Appeal from dismissal

Classification: Correctional Lieutenant

Department: Department of Corrections and Rehabilitation

Petition for rehearing granted October 21, 2008.

Pending transcript.

17. ANNOUNCEMENT OF ACTION TAKEN ON NON-EVIDENTIARY CASES

On November 18, 2008, the Board took the following action on the cases listed as presented by Bruce Monfross, Acting Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Tom - Aye

A. WITHHOLD APPEALS

WITHHOLD FROM CERTIFICATION CASES NOT HEARD BY A STAFF HEARING OFFICER

(1) CASE NO. 07-2392N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; negative employment history.

ACTION: DENIED

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(2) CASE NO. 07-1268N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; a Failure to Appear within one year and

negative driving history.

ACTION: DENIED

(3) CASE NO. 07-3253N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omission of pertinent information.

ACTION: GRANTED

(4) CASE NO. 06-3029N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omission of pertinent information and a

negative driving history. **ACTION: GRANTED**

(5) CASE NO. 07-4171N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; hard drug use within five years of

application.

ACTION: DENIED

(6) CASE NO. 07-5135N

Classification: Public Safety Dispatcher II Department: California Highway Patrol

Issue: Suitability; omitting pertinent information, negative

financial record and illegal drug use.

ACTION: DENIED

(7) CASE NO. 07-6035N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omission of pertinent information.

ACTION: GRANTED

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(8) CASE NO. 07-4543N

Classification: Youth Correctional Counselor

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omitting pertinent information.

ACTION: DENIED

(9) CASE NO. 07-4301N

Classification: Youth Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; hard drug use within five years of

application.

ACTION: DENIED

(10) CASE NO. 07-4186N

Classification: Youth Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omitting pertinent information.

ACTION: GRANTED

(11) CASE NO. 07-3942N

Classification: Associate Information Systems Analyst **Department:** Victim Compensation and Government Claims

Board

Issue: Suitability; Appellant does not meet the minimum

qualifications to participate in the exam process.

ACTION: DENIED

(12) CASE NO. 07-4598N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; firearm prohibition.

ACTION: GRANTED

(13) CASE NO. 07-3251N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; omitting pertinent information and negative

law enforcement contacts.

ACTION: DENIED

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(14) CASE NO. 07-5938N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; negative employment history.

ACTION: DENIED

(15) CASE NO. 07-4632N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

Issue: Suitability; failure to respond in a timely manner.

ACTION: GRANTED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

CASES HEARD BY A STAFF HEARING OFFICER

(1) CASE NO. 07-0303N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation **ACTION: DENIED**

(2) CASE NO. 06-4629N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation **ACTION: DENIED**

(3) CASE NO. 06-1707N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation **ACTION: DENIED**

(4) CASE NO. 07-0430N

Classification: Cadet, CHP

Department: California Highway Patrol

ACTION: DENIED

(5) CASE NO. 06-4478N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation ACTION: DENIED

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(6) CASE NO. 06-4430N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

ACTION: GRANTED

(7) CASE NO. 07-1839N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation **ACTION: DENIED**

(8) CASE NO. 06-1408N

Classification: Cadet, CHP

Department: California Highway Patrol

ACTION: DENIED

(9) CASE NO. 07-2103N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation ACTION: DENIED

DISMISSED CASES

(1) CASE NO. 07-5601N

Classification: Correctional Officer

Department: California Department of Corrections and

Rehabilitation

ACTION: DISMISSED

C. <u>EXAMINATION APPEALS, MINIMUM QUALIFICATIONS, MERITISSUE COMPLAINTS</u>

NONE

D. RULE 211 APPEALS, RULE 212 OUT OF CLASS APPEALS, VOIDED APPOINTMENT APPEALS

RULE 211

NONE

RULE 212

NONE

VOIDED APPOINTMENT

(1) CASE NO. 07-0447N

Classification: Associate Programmer Analyst (Spec)

Department: California Highway Patrol

ACTION: The Board issued a resolution remanding the

case back to staff for clarification.

E. <u>REQUEST TO FILE CHARGES CASES, PETITION FOR</u> <u>REHEARING</u>

REQUEST TO FILE CHARGES CASES

(1) CASE NO. 07-5437N

Classification: Microfilm Technician II

Department: Secretary of State

Issue: The charging party requests to file charges for violations of various subsections of Government Code section

19572.

ACTION: DENIED

18. ANNOUNCEMENT OF ACTION ON NON-HEARING AGENDA ITEMS

On November 18, 2008, the Board took the following action on the cases listed as presented by Bruce Monfross, Acting Chief Counsel, California State Personnel Board.

VOTE: Harrigan, Costigan, Tom – Aye

- A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH, REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE CRITERIA, ETC.
 - (1) DEPUTY LABOR RELATIONS COMMISSIONER I, II, III, AND IV

The Department of Industrial Relations proposes to revise the minimum qualifications of the existing classes of Deputy Labor Relations Commissioner I, II, III, and IV.

ACTION: SUBMITTED

B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE CLASS AS WELL AS THE APPROPRIATE UNION HAVE NO OBJECTION TO THE ABOLISHMENT OF THESE CLASSES.

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THE DEPARTMENT OF PERSONNEL ADMINISTRATION AND STATE PERSONNEL BOARD proposes to abolish the following unused classifications, which have been vacant for more than twenty-four months. Departments that utilize the class as well as the appropriate union have no objection to the abolishment of these classes. When classes are proposed to be abolished which are part of a class series, and other classes within the series will continue to be used, the class specification is included in the board item.

Class Codo

itie Ciass	Couc
State Park Peace Officer Supervisor IV (Lifeguard)	1044
Area Supervisor I, Office Machine Repair Service	6811
Area Supervisor II, Office Machine Repair Service	6942
Program Administrator, Office Machine Repair Service	6903
Patient Benefit and Insurance Officer IV	8664
Senior Signal and Train Control Inspector	3948
Senior Small Business Officer	5494
Health Planning Manager I	4665
Chief, Health and Safety, Department of Health	3915
Deputy Director, Health Programs, C.E.A.	7611
Assistant Program Chief, Administrative,	
Department of Health Services	8349
Supervising Transportation Rate Expert	4519
Budget Officer, Department of Water Resources	4550
CTION: ADOPTED	

19. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) SENIOR VICE PRESIDENT OF MARKETING

The California State Compensation Insurance Fund proposes to allocate the above position to the CEA category. This position will be the State Fund's chief marketing policymaker, responsible for policy formulation and will provide program management oversight to execute a comprehensive and coordinated marketing plan in alignment with the State Fund's mission.

(2) ASSISTANT DEPUTY DIRECTOR OF OPERATIONS

The California Lottery proposes to redirect a current CEA allocation to the above proposed position. This position will be responsible for policy development related to all aspects of procurement, facilities management, project management,

and business services. In addition, the position will be responsible for the development and implementation of a long-term statewide facilities program for Lottery properties.

(3) DIRECTOR, HUMAN RESOURCES

The California Department of Corrections and Rehabilitation, Plata Medical Services, proposes to allocate the above position to the CEA category. This position will provide executive leadership and management, policy formulation, guidance, consultation, oversight, administration, technical assistance, and interpretation of administrative standards, laws, rules, and regulations. This position also has full responsibility and accountability for the overall planning, organization, direction, and executive management of all human resources functions of the Office of the Receiver.

(4) SPECIAL ASSISTANT TO THE SECRETARY

The California Department of Corrections and Rehabilitation proposes to allocate the above position to the CEA category. This position will provide direct high-level expertise and assistance to the Secretary, CDCR, on all policy matters critical to the administration of departmental programs. This position will also evaluate the impact of policies that cross program responsibilities throughout the Department to ensure consistency with departmental goals and objectives.

(5) CHIEF, MEDI-CAL DENTAL SERVICES DIVISION

The Department of Health Care Services proposes to allocate the above position to the CEA category. The Chief, Medi-Cal Dental Services Division, will serve as the principal policymaker and key point of contact, both internally and externally, for the division. This position will also be responsible for the development, implementation, and interpretation of program policy, and will ensure policies are consistent with state and federal guidelines, regulations, and other mandates.

(6) CHIEF, FISCAL INTERMEDIARY AND CONTRACTS OVERSIGHT DIVISION

The Department of Health Care Services proposes changes to the above-existing CEA allocation. The Chief, Fiscal Intermediary and Contracts Oversight Division, will be responsible for ensuring that departmental policies, activities, policy interpretation and implementation processes are consistent with state and federal guidelines, regulations, and other mandates. This position will be responsible for the

development and implementation of program policies related to the unique functions of the Medi-Cal Program, and will establish division policies for performance standards and requirements, quality monitoring, fiscal integrity, and contract compliance.

(7) CHIEF, CASE RECORDS SERVICES

The California Department of Corrections and Rehabilitation proposes to reactivate the above CEA allocation. The Chief, Case Records Services will be responsible for policy development and implementation to ensure a uniform statewide departmental Case Records System. This position will also be responsible for the accurate interpretation of laws, administrative standards, and court decisions related to the processing, control, and maintenance of parolee/inmate case records.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

(1) CHIEF, WOMEN, INFANTS AND CHILDREN (WIC) NUTRITION DIVISION

The California Department of Public Health's request to allocate the above position has been approved effective October 21, 2008.

(2) CHIEF, COMPLIANCE REVIEW DIVISION

The Employment Development Department's request to abolish the above position has been approved effective October 21, 2008.

(3) CHIEF, AUDIT AND EVALUATION DIVISION

The Employment Development Department's request to revise the above position has been approved effective October 21, 2008.

ACTION: NOTED

ADJOURNMENT

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting held on January 14, 2009.

VOTE: Sheehan, Costigan, Tom, Clarey - Aye

Suzanne M. Ambrose

Executive Officer

California State Personnel Board